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No. 522

In The

Supreme Court of the United States

OCTOBER TERM, 1964

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, *et al*,
Petitioners,

vs.

AAXICO AIRLINES, INC.
Respondent

PETITIONERS' REPLY MEMORANDUM

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Petitioners file this reply memorandum primarily to comment on respondent's assertion that the "national defense effort" and therefore the "public interest" (p. 10) are involved in this case.

1. The public interest and national defense are involved, but not in the manner implied by respondent. Respondent asserts that petitioners claim $2,000,000 in back wages, which is substantially correct, but this figure only points up the severe privations among 221 pilots and their families caused by respondent's wholesale disregard of the requirements of the Railway Labor Act. Respondent implies that if it were to provide C-46 pilots with DC-6 training, which the collective bargaining contract requires, the national defense effort would be endangered. This emphasis on the national de-

fense, however, only serves to focus attention on the source of respondent's business, for respondent has a public duty which transcends that of the ordinary commercial air carrier.

Respondent's source of business and income during the period involved in this dispute has been the government of the United States. By callously disregarding its duties under the Act, respondent, during that period, amassed a fantastic profit according to undisputed evidence of record filed in the district court.[1] The United States Government ought not to be an innocent partner to profiteering at the expense of the national labor policy.

Illustrative of respondent's profit-taking are these excerpts from its financial statements for the fiscal year ending June 30, 1963:

Total operating revenue	$ 10,136,380.83
Total operating expenses	8,346,008.77
Operating profit	1,790,342.04
Percentage of profit	21½%
Net income before taxes	2,102,346.56
Net income after taxes	1,079,100.28

Such extraordinary profits, which have accrued despite huge executive-stockholder salaries, have resulted in an increase of unappropriated retained earnings from $111,586.46 on September 30, 1961, to $2,306,083.88 on June 30, 1964. And at the end of that same period respondent's current assets,

[1] The district court's stay order required respondent to file quarterly financial statements.

mostly in the form of cash [$4,022,111.50] and government securities [$981,849.80], had increased to $5,695,196.03. These figures demonstrate that the national defense effort will suffer not at all if respondent is required to make its pilots whole for their loss of additional training and income.

2. But if certiorari is not granted, the ability of the federal courts to cope with violations of the Railway Labor Act will suffer. This is the foundation issue of the petition for certiorari. The Railway Labor Act provides no counterpart of the National Labor Relations Board. The Railroad Adjustment Boards are no more than boards of arbitration with jurisdiction limited to contractual grievances. Congress vested exclusive jurisdiction to enforce the status quo and the collective bargaining provisions of the Act in the federal courts, a concept which Judge Tuttle's opinion seems not to have grasped.

3. Respondent concedes [p. 7] that the Court of Appeals "had authority to and did examine and construe the contract," determining, contrary to the trial court, that the dispute was exclusively a minor one. The Court of Appeals thus violated its own view of the federal court's limited jurisdiction. Indeed, it appears that the Fifth Circuit was saying that the trial court may construe the contract to find a minor dispute, but may not construe it to find a major dispute. We submit that is not, nor should it be, the law.

4. ALPA's grievance of July 20, 1961 (which was

timely under the contract) was certainly not "lip service" to the Act (p. 9). It ill-becomes respondent to charge a failure to appeal to the system board of adjustment when such an appeal had been rendered futile by respondent's refusal to accept or to act upon the grievance, by its refusal to acknowledge the existence of the contract, and by its adamant insistence that there was no system board in existence.

Respectfully submitted,

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